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RECENT DEVELOPMENTS: THE UNIFORM ARBITRATION ACT¹

I. INTRODUCTION

This annual Article² has been prepared since 1983 as a survey of recent developments in the case law interpreting and analyzing various versions of the Uniform Arbitration Act (U.A.A.).³ Currently, thirty-four states and the District of Columbia have adopted arbitration statutes patterned after the U.A.A.⁴ The purpose of this analysis is to promote uniformity in interpreting the U.A.A. by explaining the underlying policies and rationales that have developed from recent court decisions.⁵

II. SECTION 1: VALIDITY OF ARBITRATION AGREEMENTS

Section 1 of the U.A.A. provides that:

[a] written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.⁶

1. This project was written and prepared by *Journal of Dispute Resolution* Members and Candidates under the direction of Associate Editor in Chief Brian R. Hajicek and Note and Comment Editor Kevin L. Fritz.

2. See *Recent Developments: The Uniform Arbitration Act*, 1992 J. DISP. RESOL. 411; *Recent Developments: The Uniform Arbitration Act*, 1991 J. DISP. RESOL. 417; *Recent Developments: The Uniform Arbitration Act*, 1990 J. DISP. RESOL. 471; *Recent Developments: The Uniform Arbitration Act*, 1989 J. DISP. RESOL. 237; *Recent Developments: The Uniform Arbitration Act*, 1988 J. DISP. RESOL. 247; *Recent Developments: The Uniform Arbitration Act*, 1987 MO. J. DISP. RESOL. 177; *Recent Developments: The Uniform Arbitration Act*, 1986 MO. J. DISP. RESOL. 169; *Recent Developments: The Uniform Arbitration Act*, 1985 MO. J. DISP. RESOL. 173; *Recent Developments: The Uniform Arbitration Act*, 1984 MO. J. DISP. RESOL. 207; *Recent Developments: The Uniform Arbitration Act*, 48 MO. L. REV. 137 (1983).

3. UNIF. ARBITRATION ACT §§ 1-25, 7 U.L.A. 5 (1985) [hereinafter U.A.A.].

4. Jurisdictions which have adopted such statutes are Alaska, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, and Wyoming.

5. This Article surveys cases decided between September 1991 and September 1992.

6. U.A.A. § 1.

Courts promote a policy of settling disputes through arbitration by resolving in favor of arbitration, where doubts arise over whether private agreements mandate the process.⁷ The language in Section 1 of the U.A.A. firmly provides the basis upon which courts grant deference to the validity of arbitration agreements.⁸

A. Intent to Arbitrate

In 1986, the United States Supreme Court in *AT&T Technologies, Inc. v. Communications Workers of America*⁹ acknowledged "a presumption of arbitrability" when dealing with interpretation of arbitration clauses.¹⁰ Recent lower court interpretations of Section 1 and *AT&T Technologies* follow this presumption.

Generally, courts go to great lengths to find a valid arbitration agreement.¹¹ In *Health Employees Labor Program of Metropolitan Chicago v. County of Cook*,¹² an appellate court reversed a trial court's dismissal of the plaintiff union's motion to compel arbitration involving two union employees discharged by defendant.¹³ The union sought arbitration pursuant to its collective bargaining agreement with defendant.¹⁴ The judicial panel noted that the Illinois Public Labor Relations Act¹⁵ mandated that arbitration apply to all employees of a collective bargaining unit.¹⁶ The court also noted that the Act provides that any agreement produced under it shall prevail over any other law or regulation.¹⁷ Thus, the court found that arbitration was not to be dismissed and must be compelled.¹⁸

Courts also find valid agreements to arbitrate by reconciling various provisions within a single contract. In *Johnston County, North Carolina v. R.N. Rouse & Co.*,¹⁹ the Supreme Court of North Carolina, after reconciling two provisions in a contract between a county and a construction contractor, held that the arbitration provision therein would be enforceable.²⁰ The issue in *Johnston County* was whether the arbitration clause was reconcilable with another contract

7. Ronbeck Constr. Co. v. Savanna Club Corp., 592 So. 2d 344, 346 (Fla. Dist. Ct. App. 1992); see also *Johnston County, N.C. v. R.N. Rouse & Co.*, 414 S.E.2d 30, 32 (N.C. 1992).

8. U.A.A. § 1.

9. 475 U.S. 643 (1986).

10. *Id.* at 650.

11. See *infra* notes 12-24 and accompanying text.

12. 603 N.E.2d 591 (Ill. App. Ct. 1992).

13. *Id.* at 591.

14. *Id.* at 591-92.

15. ILL. REV. STAT. ch. 48, para. 1600-1627 (1985).

16. *Health Employees*, 603 N.E.2d at 593 (the union in this case is such a collective bargaining unit).

17. *Id.*

18. *Id.*

19. 414 S.E.2d 30 (N.C. 1992).

20. *Id.* at 31.

clause.²¹ The contract clause merely provided that the contractor waived any right to challenge jurisdiction by a North Carolina court.²²

The North Carolina Supreme Court found that the court of appeals' interpretation of the waiver clause as a forum selection device was erroneous and that it in no way contravened the agreement to arbitrate.²³ In reaching its decision, the court applied the contract law principle requiring provisions in a contract to be reconciled unless not reasonably possible.²⁴

Courts look at the validity of contracts to arbitrate by applying different standards in different situations. In *Eastman Kodak Co. v. Cetus Corp.*,²⁵ the Court of Chancery in Delaware considered the applicable standard for a preliminary injunction pending resolution of a California arbitration hearing.²⁶ Kodak, the plaintiff, urged that if the underlying claims are arbitrable, the court should grant the injunction and not pass on the merits of the claims, or, in the alternative, only determine that the claims are not frivolous.²⁷ The Chancery Court decided to address plaintiff's entitlement to arbitration of the merits.²⁸ The court stated that where the entitlement to arbitration is clear, the court's inquiry into the merits should be limited.²⁹

The court found that although Kodak could survive a scrutiny of success on the merits, it showed no irreparable harm.³⁰ Thus, the injunction was denied.³¹ Significantly, the court noted that the claim only passed scrutiny on the merits because of the presence of plaintiff's right to arbitrate.³²

Similarly, in *Jefferson County School District No. R-1 v. Shorey*,³³ the Supreme Court addressed the standard of review to be applied in a motion to compel arbitration.³⁴ The majority³⁵ held that in ruling on the arbitrability of a dispute, the court must not look at the merits of the claim.³⁶ In disputes which are subject to arbitration clauses in collective bargaining agreements, the determination of the merits of the case are for the arbitrator alone.³⁷

21. *Id.*

22. *Id.* at 34. The waiver clause provided that "the Contractor [Rouse] agrees to submit itself to the jurisdiction of the courts of North Carolina." *Id.*

23. *Id.*

24. *Id.*

25. No. CIV.A. 12,249, 1991 WL 255936 (Del. Ch. Dec. 3, 1991).

26. *Id.* at *1.

27. *Id.* at *4.

28. *Id.* at *5.

29. *Id.*

30. *Id.* at *5-6.

31. *Id.*

32. *Id.* at *5.

33. 826 P.2d 830 (Colo. 1992).

34. *Id.* at 840.

35. *Id.* at 846; Justice Vollack dissented on other grounds. *Id.* at 846-50.

36. *Id.* at 838.

37. *Id.*

Although courts are likely to find a valid arbitration agreement, there are instances where they have failed to find one. In *Shearson, Lehman, Hutton, Inc. v. Lifshutz*,³⁸ a split panel decided that the appellant securities brokers could not compel arbitration where they could produce no evidence that the appellee investors entered into a written agreement to arbitrate.³⁹ The majority found that the brokers had the burden of establishing that a written agreement to arbitrate existed between the parties.⁴⁰ The court held that the production of a standard arbitration agreement, along with other brokerage agreements, did not satisfy this burden, and thus, denial of the motion was proper.⁴¹ Judge Anstead dissented, reasoning that the brokers' evidence, as the only evidence received, was sufficient to find a valid agreement.⁴²

1. Right to Open Courts

In *Chase Commercial Corp. v. Owen*,⁴³ the court compared jury waiver provisions in loan and security agreements to arbitration contracts which waive all parties' access to the court system.⁴⁴ In this case, personal guarantors for a corporate debtor demanded a jury trial for a lender's action against the guarantors.⁴⁵ The court held that the jury waiver provisions in the contracts between the lender and guarantors were enforceable even though those agreements were contracts of adhesion.⁴⁶

The court further held that rights waived by arbitration clauses were considerably more comprehensive than the right to a jury trial.⁴⁷ Finally, the court found that both an agreement to arbitrate and a jury trial waiver clause may be set aside on the basis of fraud or overreaching.⁴⁸ Neither was claimed in this case.⁴⁹ The holding in *Chase* is significant because it illustrates the importance of arbitration clauses in effecting individual rights. The case also affirms the policy of enforcing those clauses in most cases.

A major move away from the judicial trend favoring arbitration is displayed in *Nebraska v. Nebraska Ass'n of Correctional Employees*.⁵⁰ This case involves a state decision that the right of open access to the courts, as described in

38. 595 So. 2d 996 (Fla. Dist. Ct. App. 1992).

39. *Id.* at 997.

40. *Id.*

41. *Id.*

42. *Id.* at 998.

43. 588 N.E.2d 705 (Mass. App. Ct. 1992).

44. *Id.* at 708.

45. *Id.* at 706-07.

46. *Id.* at 709.

47. *Id.* at 708 (citing *D.H. Overmeyer Co. v. Frick Co.*, 405 U.S. 174, 185-86 (1972)).

48. *Id.*

49. *Id.*

50. 477 N.W.2d 577 (Neb. 1991).

Chase,⁵¹ is too valuable to be waived by a prior contract. In *Nebraska Ass'n*, the Nebraska Supreme Court held that the state's adoption of Section 1 of the U.A.A. violated the Nebraska Constitution.⁵² The court held that authorizing binding arbitration of all future disputes, per the U.A.A., went against the open courts provision of the Nebraska Constitution.⁵³

Nebraska's Constitution provides that all injured persons "shall have a remedy by due course of law."⁵⁴ In reaching its decision, the *Nebraska Ass'n* court cited numerous Nebraska cases which voided arbitration clauses in insurance contracts.⁵⁵ In one such case, *German-American Insurance Co. v. Etherton*,⁵⁶ the court reasoned that a binding arbitration clause improperly ousts the courts of their legitimate jurisdiction.⁵⁷

The court in *Nebraska Ass'n* then cited a line of cases following the lead of *German-American Insurance*.⁵⁸ Significantly, in *Hartford Fire Insurance Co. v. Hon*,⁵⁹ the court reasoned that enforcement of a valid and subsisting cause of action is a substantial right; the citizen cannot be held to have bartered that right away before a controversy arises.⁶⁰ The *Nebraska Ass'n* court also noted a case⁶¹ which expressed a fear that allowing this constitutional right to be contracted away would open a floodgate for other constitutional guaranties to potentially be taken away.⁶² *Nebraska Ass'n* is indicative of Nebraska's historical and continued hostility to arbitration as violative of a guaranteed right to open courts.

2. Common Law Arbitration

The extent to which courts will go to find a valid agreement to arbitrate is found in *Massey v. Galvan*.⁶³ In this case, the court found that a verbal agreement existed and stated that it must look to the common law since the agreement was not in writing, and therefore, not subject to the Texas General Arbitration Act.⁶⁴ The court supported its finding that a valid arbitration

51. See *supra* note 43.

52. *Nebraska Ass'n*, 477 N.W.2d at 581.

53. NEB. CONST. art. 1, § 13.

54. *Id.*

55. *Nebraska Ass'n*, 477 N.W.2d at 581.

56. 41 N.W. 406 (Neb. 1889).

57. *Id.*

58. *Nebraska Ass'n*, 477 N.W.2d at 582.

59. 92 N.W. 746 (Neb. 1902).

60. *Nebraska Ass'n*, 477 N.W.2d at 582 (citing *Hartford Fire*, 92 N.W. at 747).

61. *Phoenix Ins. Co. v. Zlotky*, 92 N.W. 736 (Neb. 1902).

62. *Id.* at 737.

63. 822 S.W.2d 309 (Tex. Ct. App. 1992).

64. *Id.* at 315-16; TEX. REV. CIV. STAT. ANN. art. 224 (West Supp. 1988).

agreement existed by citing Texas favoritism towards arbitration and the common law of contracts.⁶⁵

In contrast to the *Massey* holding, the Minnesota Supreme Court used common law analysis and refused to enforce a verbal agreement to arbitrate in *Anderson v. Federated Mutual Insurance Co.*⁶⁶ The court in this case affirmed the appellate court decision that the agreement was unenforceable.⁶⁷ However, the court found erroneous the lower court's line of reasoning that the enactment of the U.A.A. in Minnesota superseded the common law with respect to the oral agreement.⁶⁸ The court further stated that the common law rule making oral contracts revocable until the parties actually submit to arbitration precludes the validity of the contract in this case.⁶⁹ The *Massey* and *Anderson* courts thus illustrate that the common law still applies where agreements to arbitrate do not conform to the U.A.A., most notably with oral contracts.

B. Scope of the Agreement

Courts show a clear preference for arbitration when determining which issues an arbitration agreement covers. Courts tend to find all issues arising between parties to an arbitration agreement to be encompassed by the agreement unless excluded by the agreement's express language.⁷⁰

In *Ronbeck Construction Co. v. Savanna Club Corp.*,⁷¹ the court dealt with an arbitration clause in a construction contract involving a dispute between a general contractor and a property owner.⁷² The owner sued the contractor for rescission of both the original contract containing the arbitration clause and a subsequent contract which the owner alleged was procured by misrepresentation of the contractor.⁷³ The owner also sought damages for breach of contract, fraud, conversion, civil theft, and conspiracy.⁷⁴

The contractor filed a motion with the circuit court to compel arbitration of these claims based on the original contract between the parties.⁷⁵ The court twice denied the motion and the contractor appealed.⁷⁶ The court of appeals reversed, holding that the broad language of the arbitration clause "plainly" covered all of the owner's claims.⁷⁷ The court also found that the policy of both the Florida

65. *Massey*, 822 S.W.2d at 316.

66. 481 N.W.2d 48 (Minn. 1992).

67. *Id.* at 49.

68. *Id.*

69. *Id.* at 50.

70. See *infra* notes 71-119 and accompanying text.

71. 592 So. 2d 344 (Fla. Dist. Ct. App. 1992); see also *supra* note 7.

72. *Ronbeck*, 592 So. 2d at 345.

73. *Id.* at 345-46.

74. *Id.*

75. *Id.* at 346.

76. *Id.*

77. *Id.* at 346-47.

and federal courts was to resolve all doubts involving the scope of such clauses in favor of arbitration.⁷⁸

The court stated that the claims relating to the second contract were also arbitrable because of the first contract's arbitration clause.⁷⁹ The court focused on the first agreement which provided for arbitration of any claim arising from the "breach" of the first contract.⁸⁰ This held true for the claim of rescission of the first contract as well.⁸¹ The court held that unless the rescission claim involved fraudulent inducement, it was subject to arbitration.⁸² The court also found that the civil theft claim was arbitrable even though its basis was a criminal violation.⁸³

Similarly, the court in *Island on Lake Travis, Ltd. v. Hayman Co. Contractors, Inc.*⁸⁴ applied contract theory to find a valid arbitration agreement between the parties.⁸⁵ In *Island*, the court considered the appeal by a builder of a retirement center concerning the district court's confirmation of an arbitration award for the builder's contractor.⁸⁶ The court held that there is a strong presumption favoring arbitration in Texas and that any doubt concerning the scope of issues to be submitted to arbitration should be resolved in favor of arbitration.⁸⁷

The builder claimed that because the contractor assigned its contract to a second contractor, TJH Company, which did the actual construction, all disputes between the builder and TJH were not subject to arbitration.⁸⁸ The court noted the broad language of the contract and found that such a dispute "concerning the ownership of a claim arising from the contract is just as arbitrable as a dispute . . . of the claim itself."⁸⁹ Thus, disputes concerning which party holds a cause of action based on a contract are within the scope of arbitration under Texas' version of the U.A.A.⁹⁰

In *Gordon Sel-Way, Inc. v. Spence Brothers, Inc.*,⁹¹ the Michigan Supreme Court held that interest payments properly fell within the scope of issues that an arbitrator can consider in making an award. The court stated that an award will be presumed to be within the arbitrator's authority unless there is an express

78. *Id.* at 346.

79. *Id.* at 347.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. 834 S.W.2d 529 (Tex. Ct. App. 1992), *order vacated*, 848 S.W.2d 84 (Tex. 1993) (judgment set aside to facilitate entry of settlement agreement).

85. *Id.* at 535.

86. *Id.* at 530.

87. *Id.* at 532-33.

88. *Id.* at 532.

89. *Id.* (emphasis added).

90. See TEX. REV. CIV. STAT. ANN. arts. 224-238 (West 1973 & Supp. 1992).

91. 475 N.W.2d 704 (Mich. 1991).

prohibition.⁹² Based on this principle and the broad language of the parties' arbitration clause, the court found that the lower court had improperly deleted the interest amount of the arbitrators' award.⁹³

One issue not often included within the scope of arbitrable issues is the subject of attorney's fees.⁹⁴ *Pierce v. J.W. Charles-Bush Securities, Inc.*⁹⁵ held that where the parties had agreed during arbitration to submit the issue of attorney's fees to the arbitrators, such an award was enforceable despite the arbitrators being precluded by the Florida U.A.A. from issuing attorney's fees in the absence of an agreement.⁹⁶ *Pierce* involved a civil action by certain investors for fraud, negligence, breach of contract, and breach of fiduciary duty against two stockbrokers arising from the investors' account with defendant stockbrokers.⁹⁷

During a court ordered arbitration pursuant to this action, both parties stipulated that the arbitrators would also determine any award of attorney's fees.⁹⁸ The court, following a liberal reading of the Florida U.A.A.,⁹⁹ stated that the parties may make a binding agreement to arbitrate attorney's fees.¹⁰⁰ This illustrates the liberal reading that some courts give to U.A.A. statutes in order to include as many issues within the scope of arbitration agreements as possible.¹⁰¹

Section 1 of the U.A.A. also plays an important role in insurance contracts. The Tenth Circuit Court of Appeals reversed the decision of the District Court in *Mutual Reinsurance Bureau v. Great Plains Mutual Insurance Co.*¹⁰² and held that Kansas state law precluded enforcement of an arbitration clause in an insurance contract.¹⁰³ The Kansas statute in question¹⁰⁴ provided that arbitration clauses in insurance contracts are invalid.¹⁰⁵ The District Court had held that the Federal Arbitration Act (F.A.A.)¹⁰⁶ mandated that the arbitration clause between the insurer and reinsurer was enforceable.¹⁰⁷ The Court of

92. *Id.* at 710.

93. *Id.*

94. *See Pierce v. J.W. Charles-Bush Sec.*, 603 So. 2d 625, 628-29 (Fla. Dist. Ct. App. 1992).

95. 603 So. 2d 625.

96. *Id.* at 629; *see* FLA. STAT. ch. 682.11 (1991), providing in pertinent part, "unless otherwise provided . . . expenses and fees, not including counsel fees, incurred in the conduct of the arbitration shall be paid as provided in the award."

97. *Pierce*, 603 So. 2d at 626.

98. *Id.*

99. FLA. STAT. ch. 682.11 (1991).

100. *Pierce*, 603 So. 2d at 629.

101. *See supra* notes 63-94 and accompanying text.

102. 969 F.2d 931 (10th Cir. 1992), *cert. denied*, 113 S. Ct. 614 (1992); *see also Recent Developments: The Uniform Arbitration Act*, 1992 J. DISP. RESOL. 411, 415-16, for a discussion of the lower court's decision in *Mutual Reins. Bureau v. Great Plains Mut. Ins. Co.*, 750 F. Supp. 455 (D. Kan. 1990).

103. *Mutual Reins.*, 969 F.2d at 931-32.

104. KAN. STAT. ANN. § 5-401 (1991).

105. *Mutual Reins.*, 969 F.2d at 932.

106. 9 U.S.C. §§ 1-15 (1988).

107. *Mutual Reins.*, 969 F.2d at 932.

Appeals disagreed and found that the McCarran-Ferguson Act¹⁰⁸ precluded application of the F.A.A. to this particular reinsurance agreement. Specifically, the McCarran-Ferguson Act left "the business of insurance" to the states' legislatures.¹⁰⁹ The Court of Appeals decided that the Kansas statute was such a law regulating "the business of insurance."¹¹⁰ Therefore, Kansas' version of the U.A.A. controlled and the agreement was unenforceable.¹¹¹

The Kansas Supreme Court reached a contrary result in *Skewes v. Shearson Lehman Bros.*¹¹² Here, the underlying claim sounded in tort, and the parties' contract was not insurance related.¹¹³ The majority held that the F.A.A. preempts conflicting state laws which exempt courts from enforcing arbitration agreements involving interstate commerce.¹¹⁴ The Kansas version of the U.A.A.¹¹⁵ prohibited the arbitration of tort claims.¹¹⁶ A key difference between *Skewes* and *Mutual Reinsurance* was that in *Mutual Reinsurance*, the McCarran-Ferguson Act exempted the F.A.A. from the insurance contracts.¹¹⁷ In *Skewes*, the F.A.A. applied and preempted the state bar to arbitration.¹¹⁸

The dissent in *Skewes* argued public policy and stated that the plaintiff did not contract to arbitrate tort claims with his employer when he contracted to arbitrate disputes that arose from the sale of stock.¹¹⁹ The prevailing view, however, is that all issues not expressly excluded in the agreement are to be arbitrated.

C. Statute of Limitations

Another issue that arises in arbitration is whether a statute of limitations has precluded a specific claim from being arbitrated. In *Estate of Vernon v. Shearson Lehman Bros. Inc.*,¹²⁰ the court held that a state statute of limitations can act to bar arbitration of claims which would otherwise be compelled to arbitration by the F.A.A.¹²¹ Here, securities brokers made claims against a deceased investor's estate after the Florida statute of limitations¹²² for such claims had run.¹²³ The

108. 15 U.S.C. §§ 1011-1015 (1988).

109. *Id.* § 1012(b).

110. *Mutual Reins.*, 969 F.2d at 932.

111. *Id.* at 935.

112. 829 P.2d 874 (Kan. 1992).

113. *Id.* at 875.

114. *Id.* at 876-77.

115. KAN. STAT. ANN. § 5-401 (1991).

116. *Skewes*, 829 P.2d at 875.

117. *Mutual Reins.*, *supra* note 102, at 931.

118. *Id.*

119. *Id.* at 884.

120. 587 So. 2d 1169 (Fla. Dist. Ct. App. 1991).

121. *Id.* at 1170; *see supra* note 106 for the F.A.A. citation.

122. FLA. STAT. ANN. § 733.702 (West 1989).

123. *Vernon*, 587 So. 2d at 1170.

brokers claimed that the arbitration clause in the parties' contract required the court to compel arbitration pursuant to the F.A.A.¹²⁴

The court, however, found that otherwise binding arbitration agreements can be barred by such statutes.¹²⁵ Just because parties contract to arbitrate certain disputes does not mean that the statutes of limitation are thus inapplicable.¹²⁶ The court also held that arbitrators were not to decide whether a statute's time had run.¹²⁷

In *Rowry v. University of Michigan*,¹²⁸ the court was asked to resolve another statute of limitations question.¹²⁹ In that case, the court determined which of two statutes of limitations was applicable to a bus driver's action to enforce an arbitration award against the university.¹³⁰ The driver had been discharged by the university for negligent driving and subsequently filed a grievance under his collective bargaining agreement.¹³¹ The grievance resulted in an arbitration award in his favor, ordering the university to reinstate him as a bus driver.¹³²

The university refused his request for reinstatement based on his "unwillingness to cooperate in providing the [u]niversity with necessary medical information on his medical condition."¹³³ The driver filed for judicial enforcement of the award just over ten months after the arbitrator's decision was made.¹³⁴

The issue in *Rowry* was whether Michigan's six-month statute of limitations from the Public Employment Relations Act (PERA)¹³⁵ barred the driver's enforcement of the award.¹³⁶ In *Rowry*, the Michigan Supreme Court overruled a 1987 decision¹³⁷ which had borrowed the PERA statute because it considered the six-year statute of limitations for contracts¹³⁸ unduly long for arbitration enforcement.¹³⁹ The *Rowry* court found that the language of the PERA statute prevented its application to the case at hand, and that, being contractual in nature, the breach of the arbitration agreement fell under the six-year statute of limitations

124. *Id.* The court also noted that Florida's version of the U.A.A. would normally compel arbitration. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. 490 N.W.2d 305 (Mich. 1992).

129. *Id.*

130. *Id.* at 305-06.

131. *Id.* at 306.

132. *Id.*

133. *Id.*

134. *Id.*

135. MICH. COMP. LAWS § 17.455(16)(a) (1987).

136. *Rowry*, 490 N.W.2d at 307.

137. See *Walkerville Educ. Ass'n v. Walkerville Rural Communities Sch.*, 418 N.W.2d 459 (Mich. Ct. App. 1987).

138. MICH. COMP. LAWS § 600.5807(8) (1987).

139. *Rowry*, 490 N.W.2d at 307.

for contracts.¹⁴⁰ This is yet another example of a court using contract theory to find a valid arbitration agreement.

In *Cooper v. Celente*,¹⁴¹ investor plaintiffs brought securities claims against defendant broker and his defunct firm.¹⁴² Plaintiffs subsequently contracted with defendant to submit claims to arbitration.¹⁴³ Plaintiffs were unsatisfied with the award of \$5000 filed against defendant in a Delaware trial court.¹⁴⁴ The court held that the Securities Division of Delaware had filed charges against defendant before defendant's arbitration hearing with plaintiffs had taken place.¹⁴⁵ The defendant was fined and disciplined by the Securities Commissioner as a result of these charges.¹⁴⁶

The court granted defendant's summary judgement motion because the statute of limitations for plaintiffs' statutory claims had run and because *res judicata* barred those and the common law claims as well.¹⁴⁷ After the court determined that the statute of limitations had run, the court held that *res judicata* barred all the claims because the arbitrator's decision on them was final.¹⁴⁸ The court reasoned that the language of the parties' agreement showed a clear intent to fully adjudicate their dispute and that such an adjudication had occurred.¹⁴⁹ Although statutes of limitation and the doctrine of *res judicata* are important in making arbitration awards final in some cases, they can result in arbitration being barred in others.

III. SECTION 2: PROCEEDINGS TO COMPEL OR STAY ARBITRATION

A. *Arbitrating the Entire Dispute*

Under the Uniform Arbitration Act, once an arbitration clause has been executed, all of the disputes inclusive in that agreement must be arbitrated.¹⁵⁰ In *A. E. Staley Manufacturing Co. v. Robertson*,¹⁵¹ an Illinois Appellate Court used this principle to reverse the trial court's decision and to instead compel arbitration.¹⁵²

140. *Id.* at 308.

141. No. CIV.A. 90C-JL-215, 1992 WL 240419 (Del. Super. Ct. Sept. 3, 1992).

142. *Id.* at *1-2.

143. *Id.* at *2.

144. *Id.*

145. *Id.* at *3.

146. *Id.*

147. *Id.*

148. *Id.* at *5.

149. *Id.*

150. U.A.A. § 2.

151. 603 N.E.2d. 709 (Ill. App. Ct. 1992).

152. *Id.*

The debate in *Staley* focused on an employee who, through Staley, had both a pension plan and a contractual agreement.¹⁵³ The contract contained a provision providing that if a dispute arose between employer and employee, the disputed issue would be submitted to arbitration.¹⁵⁴ When the employee was terminated from his job, there was a dispute as to the amount of benefits the employee was entitled to under his pension plan.¹⁵⁵ The court of appeals reversed the trial court's decision to stay arbitration of the issue, finding that although the arbitration provision was not specifically mentioned in the pension plan, the pension plan was part of the contractual agreement and was, therefore, subject to arbitration under the contract provision.¹⁵⁶

Subsequently, a dispute arose concerning the employer's payment of attorney's fees for the above disagreement.¹⁵⁷ The claim for attorney's fees arose out of this same pension plan.¹⁵⁸ Employee, however, did not want to arbitrate this particular claim.¹⁵⁹ The Illinois Appellate Court, using precedent set by its own Supreme Court, compelled arbitration of the claim for attorney's fees as well.¹⁶⁰ The Illinois Supreme Court case relied on by the appellate court stated that "if the dispute clearly falls within the scope of the arbitration agreement, the court should order arbitration."¹⁶¹ Here, it was already decided that the pension plan agreement was part of the contractual agreement, and thus, disputes arising from this matter must be arbitrated. The appellate court held that "[o]nce a contract containing a valid arbitration clause has been executed, the parties to the agreement are irrevocably committed to arbitrate *all disputes* under the contract."¹⁶² Thus, the appellate court was correct to compel arbitration on both debated issues.

Similarly, in *Heiden v. Galva Foundry Co.*,¹⁶³ the Illinois Appellate Court held that an entire dispute must be arbitrated even if the original circumstances are altered.¹⁶⁴ In *Heiden*, plaintiff sold his interest in Galva Foundry Company to defendant.¹⁶⁵ The transaction set forth that disputes arising between these parties would be submitted for arbitration to the firm of Deloitte, Haskins & Sells.¹⁶⁶

153. *Id.* at 710.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.* at 711.

159. *Id.*

160. *Id.*

161. *Id.* (quoting *Donaldson, Lufkin & Jenrette Futures, Inc. v. Barr*, 530 N.E.2d 439, 443 (Ill. App. Ct. 1988)).

162. *Id.* (emphasis added by court) (quoting *Johnson v. Baumgardt*, 576 N.E.2d 515, 520 (Ill. App. Ct. 1991)).

163. 584 N.E.2d 518 (Ill. App. Ct. 1991).

164. *Id.*

165. *Id.* at 519.

166. *Id.*

Subsequently, this accounting firm merged with Touche Ross, another accounting firm.¹⁶⁷

When Galva moved to compel arbitration, Heiden objected, claiming that because the specific arbitrators agreed upon no longer existed, he was no longer obligated to arbitrate.¹⁶⁸ However, contrary to Heiden's objection, the court stated that "[i]t would elevate form over substance and would be contrary to the overall purpose and goals of arbitration to hold that an agreement to arbitrate is inoperative because the national accounting firm which the parties chose merged with another national accounting firm."¹⁶⁹

Thus, the court held that the arbitration act was not to be interpreted in a rigid manner.¹⁷⁰ In this case, it was clear that the parties originally intended to arbitrate their disputes, thus seeking a fast resolution of their differences.¹⁷¹ The court stated that, generally, once a contract with a valid arbitration clause is executed, the disputes contained therein are compelled to arbitration, even if the panel itself physically changes.¹⁷²

B. Scope of the Court's Findings

After arbitration is compelled by judicial supervision, a court's jurisdiction is limited to specific matters. This limited jurisdiction has been the dispute of many recent cases.

The North Carolina Court of Appeals resolved this question in *Henderson v. Herman*.¹⁷³ In this case, the plaintiff filed suit against defendant corporations alleging breach of contract, unfair trade practices, and slander.¹⁷⁴ Defendants counterclaimed and subsequently moved to compel arbitration and to stay Henderson's pending case.¹⁷⁵ Defendant's motions were granted by Judge Henry Hight Jr.¹⁷⁶ One year later, plaintiff filed a motion with Judge Orlando F. Hudson to lift the stay.¹⁷⁷ This motion was granted by Judge Hudson.¹⁷⁸

The Court of Appeals held that Judge Hudson was without authority to lift the stay that Judge Hight granted on the plaintiff's case.¹⁷⁹ It further stated that although the Uniform Arbitration Act "requires that certain disputes be removed from direct judicial supervision, the court that compels arbitration does not lose

167. *Id.*

168. *Id.*

169. *Id.* at 521.

170. *Id.*

171. *Id.*

172. *Id.*

173. 409 S.E.2d 739 (N.C. Ct. App. 1991).

174. *Id.* at 740.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

jurisdiction.¹⁸⁰ Judge Hight did not lose jurisdiction, and further, did not have to remain uninvolved during arbitration because the Act provides for minimal judicial intervention during arbitration. However, the original judge retains the jurisdiction necessary to enforce the arbitration award.¹⁸¹

Similarly, the Texas Appellate Court agreed with the North Carolina court that, although the trial court does not lose its jurisdiction, such jurisdiction is limited during the actual arbitration proceedings. In *Transwestern Pipeline Co. v. Blackburn*,¹⁸² Mewbourne Oil sought a writ of mandamus compelling a relator, Transwestern Pipeline Company, to vacate an arbitration requirement and to instead allow discovery and proceed with trial.¹⁸³ The trial court denied this writ because the contract between the two parties called for arbitration.¹⁸⁴ A three-member panel for arbitration was then chosen.¹⁸⁵

Instead of seeking a discovery order from this panel, Mewbourne Oil requested, and was granted, the order for discovery from the 84th District Court of Ochiltree County.¹⁸⁶ The district court ruled that such discovery was to be conducted in accordance with the Civil Procedure Rules of Texas.¹⁸⁷

On appeal, the Texas Court of Appeals held that the district court exceeded its jurisdiction by granting the discovery motion; the discovery order was therefore invalid.¹⁸⁸ In so holding, the appellate court stated that "once arbitration is [instituted], . . . jurisdiction [of the trial court] is limited to enforcement of awards. . . ."¹⁸⁹

One issue that lower courts have jurisdiction over is deciding whether an agreement to arbitrate exists. Such decisions are not appealable by right, but are interlocutory.¹⁹⁰ For example, in *Patton v. Hanover Insurance Co.*,¹⁹¹ the Superior Court of Pennsylvania reached the above conclusion even though all the issues of the case were not, and would not, be decided if the dispute was resolved by arbitration.¹⁹²

In *Patton*, appellee was crossing a street when she was struck by an uninsured motorist.¹⁹³ The uninsured vehicle then hit a car insured by J. C.

180. *Id.* at 741.

181. *Id.* In *Adams v. Nelsen*, 329 S.E.2d 322 (N.C. 1985), the North Carolina Supreme Court explained that a difference does exist between a court exercising existing jurisdiction and a court that lacks jurisdiction completely. Nothing in the language of the Uniform Arbitration Act indicated that a court loses its jurisdiction when a party submits a matter to arbitration. *Id.* at 324 n.3.

182. 831 S.W.2d 72 (Tex. Ct. App. 1992).

183. *Id.* at 73.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.* at 74.

188. *Id.* at 75.

189. *Id.*

190. *Patton v. Hanover Ins. Co.*, 612 A.2d 517 (Pa. Super. Ct. 1992).

191. 612 A.2d 517.

192. *Id.* at 519.

193. *Id.* at 518.

Penney Insurance Company.¹⁹⁴ Appellee was not covered by any insurance.¹⁹⁵ However, she demanded that J. C. Penney Insurance Company settle the case or submit it to arbitration according to its own insurance policy provisions.¹⁹⁶ J. C. Penney Insurance Company objected, claiming it need not arbitrate this claim with appellee because she was not a "covered person" under their policy contract.¹⁹⁷ The J. C. Penney Insurance Company argued that if the claim went to arbitration, it would never be decided whether appellee was covered by this policy; therefore, J. C. Penney Insurance Company would potentially have to pay the claims of a noninsured person.¹⁹⁸ The trial court dismissed this objection and compelled arbitration.¹⁹⁹

The Superior Court held that the trial court has jurisdiction to determine if arbitration should proceed.²⁰⁰ Although unhappy with the outcome, J. C. Penney Insurance Company was not allowed to appeal this decision. The court stated that compelling arbitration does not finalize the dispute, but merely submits it to another stage.²⁰¹ The court held that "[s]ince the order in question merely directed the parties to proceed to arbitration and did not end the litigation, the order is interlocutory and not appealable by right."²⁰² The court concluded that only final orders are appealable.²⁰³

C. Waiver

When a party denies the existence of an agreement to arbitrate by waiving its rights to such alternative dispute resolution, motions to compel arbitration cannot be maintained.²⁰⁴ A recent case interpreting Section 2 of the Uniform Arbitration Act confirms this. In *Samuel J. Marranca General Contracting Co. v. Amerimar*,²⁰⁵ contractor sued owner, the defendant, on a construction contract.²⁰⁶ When a dispute arose regarding payment for work, Amerimar did not file a petition to compel arbitration.²⁰⁷ Nor did Amerimar raise the issue of

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.* at 519.

199. *Id.*

200. *Id.* This conclusion is consistent with the Pennsylvania Arbitration Act. PA. CONS. STAT. ANN., §§ 7304, 7314(a)(1)(v) (1982).

201. *Patton*, 612 A.2d at 518.

202. *Id.* The North Carolina Court of Appeals supported this argument in *Lee County Board of Educ. v. Adams Elec. Inc.*, 415 S.E.2d 576, 577 (N.C. Ct. App. 1992). In *Lee County*, the court held that an order is final and therefore appealable if it determines the action, discontinues the action, or grants or refuses a new trial. *Id.*

203. *Patton*, 612 A.2d at 518.

204. U.A.A. § 2.

205. 610 A.2d 499 (Pa. Super. Ct. 1992).

206. *Id.* at 500.

207. *Id.* at 501.

arbitration as an affirmative defense either in preliminary objections or in a new matter.²⁰⁸ Instead, Amerimar waited to hear the results of its pretrial motions.²⁰⁹

Upon receiving adverse rulings on these motions, Amerimar sought to enforce a provision in the contract that provided for arbitration of subsequent disputes.²¹⁰ Prior to claiming this arbitration clause was mandatory, Amerimar had been ready to litigate the dispute; it had filed actions in other jurisdictions upon the contract in question.²¹¹

The Superior Court of Pennsylvania held that Amerimar could not take actions to litigate and then inconsistently claim the arbitration clause was mandatory.²¹² According to the Pennsylvania Rules of Civil Procedure, Section 1030, the defense of arbitration is an affirmative defense;²¹³ if it is not plead in a new matter, it is waived.²¹⁴

Although there was no express waiver in this case, arbitration cannot be compelled when there is an implied waiver.²¹⁵ The court stated that "[w]aiver may be established by a party's . . . undisputed acts or language so inconsistent with a purpose to stand on the contract provisions as to leave no opportunity for a reasonable inference to the contrary."²¹⁶ The court stated that Amerimar waived its right of arbitration by its conduct.²¹⁷

IV. SECTION 3: APPOINTMENT OF ARBITRATORS BY COURT

Section 3 of the U.A.A. provides that where an arbitrator is unable to perform, or where the method for appointing one is frustrated in any manner, the court "on application of a party shall appoint one or more arbitrators."²¹⁸ Case law under this section has been very sparse this past year.

In *Heiden v. Galva Foundry Co.*,²¹⁹ referred to previously in this update, the Illinois Court of Appeals held that where the specifically designated arbitrator was an accounting firm which had merged into another firm, the parties were still obligated to arbitrate.²²⁰ Although Illinois' version of the U.A.A.²²¹ calls for

208. *Id.*

209. *Id.*

210. *Id.* at 500-01.

211. *Id.* at 501.

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. U.A.A. § 3.

219. 584 N.E.2d 518 (Ill. App. Ct. 1991).

220. *Id.* at 521.

termination of arbitration agreements if the method of appointing arbitrators is frustrated,²²² the court declined to "elevate form over substance" and compelled arbitration despite the formality concerning the original arbitrators' names.²²³

V. SECTION 5: HEARING

Section 5 of the U.A.A. provides for the procedural aspects of an arbitration hearing.²²⁴ Subsection B gives parties the right to "be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing."²²⁵

In *Alperin v. Eastern Smelting and Refining Corp.*,²²⁶ the court interpreted Subsection B. In this case, an auditor's price adjustments were not considered to have the effect of an arbitration where plaintiff stock seller was given no opportunity to be heard or present his views on the prices of stock in dispute.²²⁷ Plaintiff in *Alperin* sued defendant buyer for the balance of the value of stock sold to defendant, claiming that the auditor who determined the price deviated from the contract formula.²²⁸ Defendant claimed that the auditor's determination should be final, just as an arbitrator's decision is final.²²⁹ Plaintiff was simply informed of the final price without a hearing or discussion on the manner.²³⁰ Thus, plaintiff was not a party to any arbitration.²³¹

VI. SECTION 7: WITNESSES, SUBPOENAS, AND DEPOSITIONS

Section 7 of the U.A.A. provides arbitrators the power to order subpoenas, production of documents, and depositions.²³² In *Transwestern Pipeline Co. v. Blackburn*,²³³ appellant Transwestern sought a writ of mandamus to vacate respondent judge's order in aid of discovery in an arbitration proceeding.²³⁴ The appellate court granted the writ, holding that the lower court's discovery order was

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- 221. ILL. REV. STAT. ch. 10, §§ 101-123 (1989).
 - 222. ILL. REV. STAT. ch. 10, § 103, para. 3 (1989).
 - 223. *Heiden*, 584 N.E.2d at 521.
 - 224. See U.A.A. § 5.
 - 225. U.A.A. § 5(b).
 - 226. 591 N.E.2d 1122 (Mass. App. Ct. 1992).
 - 227. *Id.* at 1127.
 - 228. *Id.* at 1124.
 - 229. *Id.*
 - 230. *Id.* at 1127.
 - 231. *Id.*
 - 232. U.A.A. § 7.
 - 233. 831 S.W.2d 72 (Tex. Ct. App. 1992).
 - 234. *Id.* at 73-74.

beyond its powers once arbitration had commenced.²³⁵ The court addressed the issue of what "commencement" of proceedings means, finding that the arbitration process begins once the first arbitrator is selected.²³⁶ In this case, the first arbitrator was chosen before the order in dispute was issued by the court.²³⁷

VII. SECTION 11: CONFIRMATION AND VACATION OF AWARDS

A. Statutory Requirements

According to Section 11 of the U.A.A., for a court to confirm an arbitration award, the award must comply with the specific statutory requirements of that particular state.²³⁸ A number of recent cases have interpreted Section 11 of the Uniform Arbitration Act. For example, failure to rigidly comply with the Pennsylvania arbitration statute led to an invalid award in *Jackson v. Government Employees Insurance Co.*²³⁹ The relevant statute in this case stated a general rule: "The award of arbitrators shall be in writing and signed by the arbitrators joining in the award. . . ."²⁴⁰ In *Jackson*, the court cited two problems that occur when only one of the arbitrators signs the award.²⁴¹ First, the award simply does not meet the requirements set out in the statutory language.²⁴² Second, the award is invalid because it only shows one vote in favor of the award, and therefore, lacks majority support.²⁴³ An award signed in such a fashion was held null and void.²⁴⁴

Similarly, the Appellate Court of Minnesota in *Stassen v. Tschida*²⁴⁵ required not only the signature of all arbitrators as in *Jackson*, but also required that all awards:

shall contain the name of the parties, a summary of the issues in controversy, the damages and other relief requested, the damages and other relief awarded, a statement of any other issues resolved, the names of the arbitrators, the date the claim was filed and the award rendered,

235. *Id.* at 78.

236. *Id.* at 77-78.

237. *Id.*

238. *See* U.A.A. § 11.

239. 612 A.2d 1071, 1073 (Pa. Super. Ct. 1992).

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

245. No. C2-91-2070, 1992 WL 67536 (Minn. Ct. App. Apr. 7, 1992) (unpublished decision).

the number and dates of hearing sessions, the location of hearing sessions, [and] the location of the hearings.²⁴⁶

In this case, appellant claimed that the arbitration award granted was invalid because it failed to determine the parties' fault percentages.²⁴⁷ The court held that such a request for fault percentages must be made orally because it does not fall under the statutory requirements; because appellant did not so request, his argument lacked merit.²⁴⁸

B. Bias and Fraud

Just as arbitration statutes must be rigidly complied with to be valid, the proceedings must also be free from any bias, fraud, or other corruption in order to be upheld.²⁴⁹ In *Bruder v. Country Mutual Insurance Co.*,²⁵⁰ the Illinois Appellate Court addressed procedural misconduct and bias. In *Bruder*, plaintiff was injured in a car accident involving two uninsured motorists. The defendant insurance company denied the plaintiff's claim and the dispute was sent to arbitration.²⁵¹ Defendant selected Mr. James Bleyer as his choice of arbitrators to serve on the panel.²⁵² Defendant had been a valued client of Mr. Bleyers for the past twenty-five years.²⁵³ Additionally, Mr. Bleyers was currently retained by defendant on separate business matters.²⁵⁴ Plaintiff chose attorney John Womick for the panel.²⁵⁵ Mr. Womick had handled numerous cases against the defendant and his insureds.²⁵⁶ These two attorneys then chose a neutral party to complete the panel.²⁵⁷

The arbitration panel decided the dispute in favor of defendant, and subsequently, the trial court held that the panel was not biased in its decision.²⁵⁸ On appeal, plaintiff claimed that the trial court abused its discretion in allowing an attorney with a relationship with defendant to serve on the arbitration panel.²⁵⁹ The appellate court declared that there were no requirements as to who may serve as an arbitrator.²⁶⁰ The court stated that naturally each party would

246. *Id.* at *2.

247. *Id.*

248. *Id.* at *3.

249. U.A.A. § 11.

250. 596 N.E.2d 875 (Ill. App. Ct. 1992).

251. *Id.* at 876-77.

252. *Id.* at 877.

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.* at 880.

258. *Id.* at 876.

259. *Id.* at 880.

260. *Id.* at 880-81.

designate someone to the panel who is sympathetic to that party's cause.²⁶¹ This anticipated practice is the reason for the third, neutral panel member.²⁶² The court also held that plaintiff's claim was unsupported because vacating an award due to bias on part of the arbitrators usually concerns the neutral party.²⁶³

Where bias of the arbitration panel is at issue, the award granted will still not be vacated unless such bias is "definite, direct, and capable of demonstration rather than remote, uncertain, or speculative."²⁶⁴ The trial court in *Bruder* considered the totality of the situation and held that there was no such bias.²⁶⁵ The trial court did, however, conclude that such a past relationship as existed here between defendant and his chosen arbitrator may be considered when looking for bias.²⁶⁶ The court stated that the relationship itself, however, is not *per se* invalid and the determined award is not automatically vacated.²⁶⁷

C. Prejudicial Effect

Even if free from both fraud and bias, an arbitration panel's decision may not be upheld if the decision would result in unfair prejudice to one of the parties. The Supreme Court of Alaska held that a trial court may exclude part of an arbitration panel's findings of fact if the prejudicial effect of those findings outweighs their probative value.²⁶⁸

In *Municipality of Anchorage (MOA) v. Frank Coluccio Construction Company (FCCC)*,²⁶⁹ a dispute arose concerning the amount of money to be paid under a contract provision for construction of a tunnel site.²⁷⁰ In the contract, the parties agreed to arbitrate numerous issues and also agreed that, with respect to liability issues, the arbitration decision would be both binding and nonappealable.²⁷¹ Another clause of the contract provided that FCCC would be entitled to more money than originally agreed upon if, while tunneling, they encountered differing land site conditions than those originally expected.²⁷² When a dispute arose, the parties submitted it to arbitration.²⁷³

261. *Id.* at 881.

262. *See id.* at 880-81.

263. *Id.* at 881.

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Municipality of Anchorage v. Frank Coluccio Constr. Co.*, 826 P.2d 316, 324 (Alaska 1992).

269. 826 P.2d 316.

270. *Id.* at 318.

271. *Id.* at 319.

272. *Id.* at 318.

273. *Id.* at 319.

After hearing the claims, the arbitration panel concluded that FCCC did encounter differing site conditions during its construction.²⁷⁴ However, the panel stated that FCCC, with their experience, should have been prepared for such site conditions and should have mitigated the damages.²⁷⁵

The parties moved to the trial court for confirmation of the panel's decision.²⁷⁶ MOA sought to have both the Findings and the Award confirmed.²⁷⁷ FCCC asked only for confirmation of the Award in order to avoid raising any conclusions concerning their negligence.²⁷⁸ The trial court agreed with FCCC and did not confirm the Findings of the panel.²⁷⁹

The question before the panel was simply whether there was a breach of contract.²⁸⁰ The arbitrators had only to decide this "yes or no" question. The panel decided "Yes", MOA was liable because it breached the contract.²⁸¹ Even though the panel chose to continue its analysis and answer the question "Yes . . . but," the trial court was not required to consider the further analysis.²⁸²

The trial court held that allowing the Findings portion of the arbitration to be presented "would lead the jury to confusion, would be misleading, and would be unfairly prejudicial to the plaintiff."²⁸³ The court stated that when certain information will prejudice a jury's findings, the trial court has discretion to determine if the evidence will be admitted into evidence.²⁸⁴

VIII. SECTION 10: FEES AND EXPENSES OF ARBITRATION

A. Arbitrator's Jurisdiction

When a dispute is submitted to arbitration, the chosen panel resolves numerous issues. As the following two cases indicate, the structure of the arbitration agreement itself often determines the jurisdiction of the panel's decisions.

In *Fridman v. Citicorp Real Estate Inc.*,²⁸⁵ the issue of an arbitration hearing was the entitlement of a senior mortgagee to attorney's fees. The arbitration panel awarded attorney fees to the senior mortgagee, including fees for

274. *Id.* at 320.

275. *Id.*

276. *Id.*

277. *Id.* at 320-21.

278. *Id.* at 321.

279. *Id.*

280. *Id.* at 322.

281. *Id.*

282. *Id.*

283. *Id.* at 321.

284. *Id.* at 324.

285. 596 So. 2d 1128 (Fla. Dist. Ct. App. 1992).

time spent during the arbitration proceeding actually determining attorney's fees.²⁸⁶ The Florida Second District Court of Appeals held that the arbitrators overstepped their subject matter jurisdiction by awarding fees incurred in conducting arbitration.²⁸⁷ The court stated that it is the job of the circuit court, not the arbitrators, to determine such fees.²⁸⁸ The court further stated that most arbitrators are business people chosen for their expertise and knowledge of the disputed subject matter.²⁸⁹ Generally, arbitrators are not experienced in determining reasonable attorney's fees.²⁹⁰ Even though the arbitration panel in *Fridman* consisted of three attorneys who were experienced in determining fees, the court held that this exception, though reasonable, would still not be allowed.²⁹¹

Five months later, the Florida Fourth District Court of Appeals stated that if the parties themselves specifically agree to submit the fee issue to an arbitration panel, the clause can be valid and enforceable. In *Pierce v. Charles-Bush*,²⁹² the parties stipulated on record that along with fraud, negligence, and breach of contract claims, the arbitrators would determine the issue of entitlement to attorney's fees.²⁹³ Despite the stipulation, Bush argued that the arbitrators did not have the authority to decide matters concerning attorney's fees.²⁹⁴

The court of appeals, however, after reviewing past decisions and its own arbitration act, concluded that the policy favors arbitration.²⁹⁵ The court found that the fees awarded to attorneys are not designed to benefit the attorney, but are instead meant to indemnify the parties.²⁹⁶ The court further stated that there is no reason not to enforce an agreement regarding attorney's fees if that is what the contracting parties agreed on.²⁹⁷ The court stated that by agreeing to arbitrate, the parties are favoring a fast and less expensive resolution of their dispute.²⁹⁸ Further, when parties specifically agree to submit the fee issue to arbitration, the decision by the arbitrators will be enforced.²⁹⁹

286. *Id.* at 1129.

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

292. 603 So. 2d 625 (Fla. Dist. Ct. App. 1992).

293. *Id.* at 626.

294. *Id.* at 627.

295. *Id.*

296. *Id.* at 630.

297. *Id.* at 626.

298. *Id.* at 630.

299. *Id.* at 631.

IX. SECTION 14: JUDGMENT OR DECREE ON AWARD

After an arbitrator's ruling has been confirmed, modified, or corrected, U.A.A. Section 14 provides for a judgment to be entered and enforced just like any other judgment.³⁰⁰ Section 14 also allows the court to award costs in addition to entering and enforcing the award.³⁰¹

In *Delaney Electric Co. v. Schiessle*,³⁰² an electrical contractor filed a mechanic's lien claim which subsequently went to arbitration.³⁰³ After the arbitrator awarded the contractor damages, the trial court declined to confirm the arbitrator's ruling regarding the validity of the mechanic's lien.³⁰⁴ However, upon deciding not to confirm the award, the trial court granted summary judgment on the basis of the award.³⁰⁵ The award stated only that "Schiessle shall pay to Delaney Electric Company the sum of . . . \$13,269.00,"³⁰⁶ and "[t]he claim of Michael Schiessle against Delaney Electric Company is denied in its entirety."³⁰⁷

The trial court failed to hear evidence as to whether the requirements for a valid lien claim were met before entering summary judgment.³⁰⁸ The appellate court questioned the power of the trial court to enter summary judgment for the contractor after declining to confirm the arbitration award.³⁰⁹ The appellate court concluded that the trial court could not enter summary judgment based solely on an unconfirmed arbitration award without hearing evidence on the motion for summary judgment.³¹⁰ Therefore, the appellate court reversed, stating "we cannot permit the circuit court to accomplish indirectly that which it acknowledged it could not do directly."³¹¹

In *Kliefoth v. Fields*,³¹² a defendant in a securities lawsuit filed for bankruptcy and received protection from the automatic stay.³¹³ The bankruptcy court granted partial relief from the stay to allow the securities dispute to be

300. U.A.A. Section 14 provides:

"Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court."

U.A.A. § 14.

301. *Id.*

302. 601 N.E.2d 978 (Ill. App. Ct. 1992).

303. *Id.* at 981.

304. *Id.* at 984.

305. *Id.*

306. *Id.* (quoting from the court's opinion, which is quoting from the arbitration award).

307. *Id.*

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.*

312. 828 S.W.2d 714 (Mo. Ct. App. 1992).

313. *Id.*

arbitrated.³¹⁴ After the arbitration proceeding, the trial court entered judgment on the award.³¹⁵ The Missouri Court of Appeals held that the trial court was not authorized to enter judgment on an arbitration award where partial relief from an automatic stay in bankruptcy specifically allowed only arbitration proceedings.³¹⁶ The court concluded that the statutory procedure set out in U.A.A. Section 14 distinguishes an arbitration award from a judgment rendered on that award by a court of law.³¹⁷ Since the relief from the stay only allowed issuance of the arbitration award, the trial court was enjoined from entering a judgment and the judgment entered was void.³¹⁸

The issue of court-awarded costs under Section 14 pursuant to arbitration was addressed in *Wachtel v. Shoney's, Inc.*³¹⁹ In this case, minority shareholders sued to confirm an arbitration award against Shoney's, the majority shareholder in the corporation.³²⁰ The trial court confirmed the award and granted attorney's fees and expenses to plaintiffs.³²¹ The appellate court held that awarding attorney's fees and expenses in confirming an arbitration award was within the discretion of the trial court.³²² The appellate court also stated that the trial court could conduct a follow up hearing to award attorney's fees and expenses for the appeal.³²³

X. SECTION 15: JUDGMENT ROLL, DOCKETING

U.A.A. Section 15 contains two provisions.³²⁴ First, the judgment roll should consist of: (1) the arbitration agreement; (2) the arbitration award; (3) the order confirming, modifying, or correcting the award; and (4) a copy of the

314. *Id.*

315. *Id.* at 715.

316. *Id.* at 716.

317. *Id.* See also MO. REV. STAT. § 435.400 (1986).

318. *Klieforth*, 828 S.W.2d at 716.

319. 830 S.W.2d 905 (Tenn. Ct. App. 1992).

320. *Id.* at 906.

321. *Id.*

322. *Id.* at 910.

323. *Id.*

324. U.A.A. Section 15 provides:

(a) On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

- (1) The agreement and each written extension of the time within which to make the award;
- (2) The award;
- (3) A copy of the order confirming, modifying or correcting the award; and
- (4) A copy of the judgment or decree.

(b) The judgment or decree may be docketed as if rendered in an action.

U.A.A. § 15.

judgment or decree.³²⁵ Second, the judgment or decree can be docketed.³²⁶ No cases interpreting U.A.A. Section 15 were decided during the time frame of this update.

XI. SECTION 16: APPLICATIONS TO COURT

U.A.A. Section 16 provides for applications to the court by motion and guarantees that the motions will be heard in the same manner as any other motion before the court.³²⁷ In *Concord General Mutual Insurance Co. v. Northern Assurance Co.*,³²⁸ the parties were insurance companies who submitted a dispute over an auto accident to an arbitration panel pursuant to a special arbitration agreement of the insurance industry.³²⁹ Concord then applied to have the arbitration award vacated.³³⁰ The trial court refused to hear oral testimony on Concord's motion to vacate.³³¹ Concord appealed, claiming it should have been given an opportunity to argue its motion in a testimonial hearing.³³² On appeal, Concord argued that the trial court abused its discretion because in denying a hearing, the court had deprived Concord of its statutory right of review.³³³

The appellate court concluded that the trial court had discretion to receive evidence by affidavit, deposition, or oral testimony.³³⁴ The court stated that "a party is not entitled to a testimonial hearing on a motion to vacate or confirm an arbitration award in the absence of a showing that such a hearing will disclose relevant facts not otherwise before the court in affidavit form."³³⁵ Consequently, the court held that when Concord failed to demonstrate the need for a testimonial hearing, the trial court's denial of the motion to vacate without a hearing did not infringe on Concord's rights and did not amount to an abuse of discretion.³³⁶

325. *Id.*

326. *Id.*

327. U.A.A. Section 16 provides:

Except as otherwise provided, an application to the court under this act shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

U.A.A. § 16.

328. 603 A.2d 470 (Me. 1992).

329. *Id.* at 471.

330. *Id.*

331. *Id.*

332. *Id.*

333. *Id.* at 472.

334. *Id.*

335. *Id.*

336. *Id.*

XII. SECTION 17: JURISDICTION

U.A.A. Section 17 provides for jurisdiction over arbitration in any court of competent jurisdiction.³³⁷ The forming of an arbitration agreement between the parties confers jurisdiction on the court to enforce the agreement and to enter judgment based on the award.³³⁸

In *Modern Health Care Services, Inc. v. Puglisi*,³³⁹ the parties entered an agreement for Modern to purchase the medical practice and goodwill of Puglisi.³⁴⁰ After a few years under the agreement, Puglisi filed a demand for arbitration to determine if the agreement had been terminated.³⁴¹ While the arbitration proceeding was pending, Modern filed suit in circuit court seeking an injunction for the return of some files Puglisi removed.³⁴² The trial court granted the injunction and ordered Modern to continue making monthly payments pursuant to the agreement.³⁴³ Subsequently, the parties disagreed as to the payments ordered by the trial court.³⁴⁴ Puglisi filed a motion for contempt and the trial court granted the motion ordering Modern to continue making payments.³⁴⁵ Modern appealed the order of the trial court, claiming the trial court lacked jurisdiction to force Modern to continue making payments.³⁴⁶

At the time of the court order, the meaning of the agreement was the central issue in arbitration.³⁴⁷ The appellate court stated that the institution of the arbitration proceeding divested the trial court of jurisdiction on all issues except the making of an agreement or provision.³⁴⁸ The appellate court held that the trial court was without jurisdiction to enter the order, reasoning that the contract issue was in front of the arbitrator before the order was entered and that the arbitrator had full authority to grant relief.³⁴⁹

In *Hydaburg Cooperative Ass'n v. Hydaburg Fisheries*,³⁵⁰ the Native Alaskan Cooperative, after entering into an agreement to arbitrate, asserted

337. U.A.A. Section 17 provides:

The term 'court' means any court of competent jurisdiction of this State. The making of an agreement described in Section 1 providing for arbitration in this State confers jurisdiction on the court to enforce the agreement under this act and to enter judgment on an award thereunder.

U.A.A. § 17.

338. *Id.*

339. 597 So. 2d 930 (Fla. Dist. Ct. App. 1992).

340. *Id.*

341. *Id.*

342. *Id.*

343. *Id.*

344. *Id.* at 931.

345. *Id.*

346. *Id.*

347. *Id.*

348. *Id.*

349. *Id.*

350. 826 P.2d 751 (Alaska 1992).

immunity from jurisdiction of U.S. courts.³⁵¹ The arbitration agreement between the parties provided that any dispute be decided in accordance with Alaska law.³⁵² Hydaburg Fisheries sued the Cooperative for breach of contract, and the court ordered arbitration pursuant to the agreement.³⁵³ The arbitration panel awarded Hydaburg Fisheries over \$200,000 and the trial court confirmed.³⁵⁴ The Cooperative then appealed asserting lack of jurisdiction.³⁵⁵ The appellate court stated that the agreement to arbitrate constituted a waiver of the tribe's sovereign immunity regarding proceedings to compel arbitration or enforce arbitration awards.³⁵⁶ Consequently, the court held that U.A.A. Section 17 granted jurisdiction to the state superior court to order arbitration and enter judgment on the award.³⁵⁷

Finally, in *Pierce v. J.W. Charles-Bush Securities, Inc.*,³⁵⁸ discussed previously in this update, the parties agreed to submit the issue of attorney's fees to arbitration.³⁵⁹ The court stated that the parties, by agreeing to arbitrate, confer jurisdiction on the court to enforce the agreement pursuant to U.A.A. Section 17.³⁶⁰ The court further reasoned that if the parties confer jurisdiction, they also have the power to decide what claims to submit to arbitration.³⁶¹ In conclusion, the court held that U.A.A. Section 10³⁶² prevents arbitrators from awarding attorney's fees, but the effect of Section 10 may be changed by agreement of the parties.³⁶³

XIII. SECTION 19: APPEALS

Section 19 of the U.A.A. authorizes an appeal from an order of the court: (1) denying an application to compel arbitration, (2) granting an application to stay arbitration, (3) confirming or denying confirmation of an award, (4) modifying an

351. *Id.* at 753.

352. *Id.*

353. *Id.*

354. *Id.*

355. *Id.*

356. *Id.* at 755.

357. *Id.*

358. 603 So. 2d 625 (Fla. Dist. Ct. App. 1992).

359. *Id.* at 626-27. The parties stipulated during the course of arbitration that the issue of attorney's fees was to be decided by the arbitrators. *Id.* at 626.

360. *Id.* at 630.

361. *Id.* at 630-31.

362. U.A.A. Section 10 provides: "Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, *not including counsel fees*, incurred in the conduct of the arbitration, shall be paid as provided in the award."

U.A.A. § 10 (emphasis added).

363. *Pierce*, 603 So. 2d at 631.

award, (5) vacating an award without directing a rehearing, or (6) of a judgment of decree entered.³⁶⁴

In *Stahl v. McGenty*,³⁶⁵ an appellate court dealt with the issue of when an appeal should be granted on an order denying a motion to compel arbitration.³⁶⁶ Here, the purchasers of a business brought suit against the seller for fraudulent misrepresentations concerning past income of the business.³⁶⁷ The defendant filed a motion to compel arbitration which was denied by the trial court.³⁶⁸

Defendant then proceeded to trial without appealing the court's denial of arbitration.³⁶⁹ After losing a jury verdict at trial, defendant attempted to appeal the trial court's earlier denial of the motion.³⁷⁰ The appellate court stated that the denial of a motion to compel arbitration should have been immediately appealed,³⁷¹ and thus, denied the appeal following final judgment.³⁷² The court reasoned that the appellant waived his right to appeal the order by not attempting to appeal immediately following the ruling of the trial court.³⁷³

In *Capital Income Properties-LXXX v. Waldman*,³⁷⁴ a group of limited partners alleged fraud, and Capital moved to compel arbitration.³⁷⁵ As in *Stahl*, the trial court denied the motion to compel arbitration.³⁷⁶ However, unlike the appellant in *Stahl*, Capital immediately filed an appeal.³⁷⁷

The appellate court found the arbitration provision in the parties' agreement not enforceable under the U.A.A.³⁷⁸ The court further concluded that since the arbitration provision was unenforceable, U.A.A. Section 19 did not authorize an

364. U.A.A. Section 19 provides:

(a) An appeal may be taken from:

- (1) An order denying an application to compel arbitration made under Section 2;
- (2) An order granting an application to stay arbitration made under Section 2(b);
- (3) An order confirming or denying confirmation of an award;
- (4) An order modifying or correcting an award;
- (5) An order vacating an award without directing a rehearing; or
- (6) A judgment or decree entered pursuant to the provisions of this act.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

U.A.A. § 19.

365. 486 N.W.2d 157 (Minn. Ct. App. 1992).

366. *Id.* at 159.

367. *Id.* at 158.

368. *Id.*

369. *Id.*

370. *Id.*

371. *Id.* at 159.

372. *Id.*

373. *Id.*

374. 835 S.W.2d 152 (Tex. Ct. App. 1992).

375. *Id.* at 153.

376. *Id.*

377. *Id.*

378. *Id.* at 155.

interlocutory appeal.³⁷⁹ The court held that because no interlocutory appeal was provided by the U.A.A. or any other applicable statute, the appellate court could only have jurisdiction over a final judgment.³⁸⁰

In *Lee County Board of Education v. Adams Electrical, Inc.*,³⁸¹ the appellate court addressed the issue of an interlocutory appeal of a stay of arbitration.³⁸² Here, the county board of education filed suit seeking to stay the arbitration claims of an electrical worker.³⁸³ The trial court enjoined the parties from arbitrating prior to determining whether there was an enforceable arbitration agreement.³⁸⁴ The court concluded that the order could not be appealed because the order only maintained the status quo.³⁸⁵ The court held that interlocutory appeals should be allowed only if the order or ruling: (1) determines the action, (2) discontinues the action, (3) grants or refuses a new trial, or (4) prejudices a substantial right.³⁸⁶

A refusal to vacate an arbitration award is normally not appealable under Section 19. However, a Minnesota appellate court found otherwise in *Independent School District No. 88 v. School Service Employees Union Local 284*.³⁸⁷ In this case, a union of school service employees sued on behalf of five cooks at the school.³⁸⁸ The union's motion to compel arbitration was granted, and the arbitrator awarded the employees reinstatement with back pay.³⁸⁹ Thereafter, the school district's motion to vacate the award was denied, and the district appealed.³⁹⁰ The appellate court concluded that the order refusing to vacate was the "functional equivalent" of an order confirming the award, which is appealable under Section 19.³⁹¹

However, in *Carroll v. State Farm Automobile Insurance Co.*,³⁹² a Pennsylvania court found that an order confirming an award must be reduced to judgment before the appeal is timely.³⁹³

379. *Id.*

380. *Id.*

381. 415 S.E.2d 576 (N.C. Ct. App. 1992).

382. *Id.* at 576-78.

383. *Id.* at 576.

384. *Id.* at 577.

385. *Id.*

386. *Id.*

387. 490 N.W.2d 431 (Minn. Ct. App. 1992)

388. *Id.* at 432.

389. *Id.* at 433.

390. *Id.*

391. *Id.* at 433 n.1.

392. 616 A.2d 660 (Pa. Super. Ct. 1992).

393. *Id.* at 664.

XIV. SECTION 12: VACATING AN AWARD

Case law, as it has developed, favors arbitration with a minimal amount of court interference. Arbitrators are considered judges of both law and fact and are not required to divulge their reasoning on the issue(s) decided. Generally, even if the court thinks an arbitrator erred as to a matter of law or fact, the court will not vacate an award absent a finding of some misconduct. Nor will the court reverse an award that is unjust or inadequate. There are, of course, limited situations where a court will vacate an award pursuant to a party's motion to vacate.³⁹⁴ Courts give deference to arbitrators' decisions to ensure an effective and final means of dispute resolution.

A. Corruption, Fraud, or other Undue Means in Award Formation

In order to establish fraud, the proponent has the burden of proving it with clear and satisfactory evidence.³⁹⁵ Courts strongly favor confirming arbitration

394. U.A.A. Section 12 provides:

(a) Upon application of a party, the court shall vacate an award where:

- (1) The award was procured by corruption, fraud or other undue means;
- (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
- (3) The arbitrators exceeded their powers;
- (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 5, as to prejudice substantially the rights of a party; or
- (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under Section 2 and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this Section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in clause (5) of Subsection (a) the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with Section 3, or if the award is vacated on grounds set forth in clauses (3) and (4) of Subsection (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with Section 3. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

U.A.A. § 12.

395. *Professional Builders, Inc. v. Sedan Floral, Inc.*, 819 P.2d 1254, 1257 (Kan. Ct. App. 1991).

awards.³⁹⁶ In *Professional Builders, Inc., v. Sedan Floral, Inc.*,³⁹⁷ the plaintiff contracted to build an interior office for the defendant. The architect on the project was also a fifty percent shareholder in the plaintiff corporation.³⁹⁸ It was the architect's responsibility to certify when the project was complete, according to his professional opinion.³⁹⁹ The dispute arose when the architect in this case declared the project finished, a determination with which the defendant clearly disagreed.⁴⁰⁰ The defendant contended that they were denied a fair and independent determination by the architect as to when the project was completed.⁴⁰¹ This dispute was arbitrated in favor of the plaintiff.⁴⁰² Thereafter, the defendant motioned to vacate the award on the grounds that it was procured by fraud, corruption, or other undue means; the basis of this claim centered on the architect's interest in the plaintiff's corporation.⁴⁰³

The district court found that the defendant failed to establish its burden of showing fraud, corruption, or other undue means.⁴⁰⁴ It held that in order to overturn an arbitrator's decision based on fraud, "there must be proof of an arbitrary disregard of undisputed evidence or some extrinsic consideration such as bias, passion or prejudice."⁴⁰⁵ The appellate court in this case noted that a motion to vacate for reasons of fraud is usually based on an allegation of fraud on the part of the arbitrator.⁴⁰⁶ As a basis for a motion to vacate, the appellate court held that courts will only consider fraud in the actual arbitration proceeding.⁴⁰⁷ The court found that defendant did not allege fraud on the part of the arbitrator, but rather on a third party, which does not meet the fraud requirement for a motion to vacate.⁴⁰⁸ The appellate court affirmed the arbitrator's award "based on the limited scope of review of arbitration proceedings."⁴⁰⁹

In *Drinane v. State Farm Mutual Automobile Insurance Co.*,⁴¹⁰ the plaintiff attempted to vacate an arbitration award on grounds of undue means.⁴¹¹ "Undue means" refers to an unjust and unfair decision or decision-making process by the

396. *Id.*

397. 819 P.2d 1254.

398. *Id.* at 1255.

399. *Id.* at 1256.

400. *Id.*

401. *Id.*

402. *Id.*

403. *Id.*

404. *Id.* at 1258.

405. *Id.* (quoting *Lostutter v. Estate of Larkin*, 679 P.2d 181 (Kan. 1984)).

406. *Id.*

407. *Id.*

408. *Id.*

409. *Id.* at 1259.

410. 584 N.E.2d 410 (Ill. App. Ct. 1991).

411. *Id.* at 411.

arbitrator.⁴¹² This court determined that "undue means" should be construed as meaning something along the lines of "fraud" or "corruption."⁴¹³ Drinane and State Farm entered into arbitration over an uninsured motorists policy. The arbitrator was an attorney who was simultaneously representing a client who was involved in a pending action against State Farm.⁴¹⁴ However, the arbitrator did not disclose this information.⁴¹⁵ Drinane was not satisfied with the award they received and contended that the arbitrator's involvement in the pending action, and the failure to disclose this information, constituted "undue means."⁴¹⁶

The court held that an order to vacate an award must be supported by "very substantial grounds."⁴¹⁷ The moving party has the burden of showing that the bias is "direct, definite, and capable of demonstration, rather than remote, uncertain or speculative."⁴¹⁸ Courts are reluctant to set aside an arbitrator's award simply on a failure to disclose a relationship with a party.⁴¹⁹ This court denied Drinane's motion to vacate because their assertion of undue means on the part of the arbitrator was too remote and uncertain.⁴²⁰ Public policy dictates that allowing disgruntled parties to assert bias on the part of the arbitrator, in an attempt to vacate a disfavored award, should not be allowed.⁴²¹

B. Arbitrator Partiality, Misconduct, and Bias

A relationship between an arbitrator and a party can, however, support a motion to vacate an award. In *Donegal Insurance Co. v. Longo*,⁴²² a motion to vacate was granted because the arbitrator in the proceeding was simultaneously representing one of the parties in an unrelated matter.⁴²³ Under the arbitration agreement between Donegal Insurance (Donegal) and Shirley Longo (Longo), each party was allowed to choose an arbitrator.⁴²⁴ The arbitrators chosen would then select a third arbitrator.⁴²⁵ The Longos chose an attorney who was representing them in another dispute.⁴²⁶ Subsequently, the arbitrators found for the Longos.⁴²⁷ After learning of this relationship, Donegal motioned to vacate the

412. *Id.* at 414.

413. *Id.*

414. *Id.* at 411.

415. *Id.*

416. *Id.*

417. *Id.* at 413 (citing *Giddens v. Board of Educ.*, 75 N.E.2d 286, 291 (Ill. 1947)).

418. *Id.*

419. *Id.*

420. *Id.* at 414.

421. *Id.* at 415.

422. 610 A.2d 466 (Pa. Super. Ct. 1992).

423. *Id.* at 467.

424. *Id.*

425. *Id.*

426. *Id.*

427. *Id.*

award on the basis that they were denied a fair hearing due to the conflict of interest on the part of one of the arbitrators.⁴²⁸

The court stated that in order for an arbitration proceeding to comport with due process, the hearing must be conducted by arbitrators who are impartial and disinterested.⁴²⁹ The court sustained the motion to vacate and held that the attorney-client relationship between Longo and one of the arbitrators made it unlikely that the arbitrator was able to render a fair decision.⁴³⁰

In *Vascular and General Surgical Associates v. Loiterman*,⁴³¹ Dr. Loiterman entered into an employment contract with the plaintiff, Vascular and General Surgical Associates [hereinafter VGSA].⁴³² The employment agreement contained a covenant that Dr. Loiterman would not compete for two years following the termination of his employment.⁴³³ When the contract lapsed, Dr. Loiterman established a surgical practice that competed with VGSA.⁴³⁴ In response, VGSA received an injunction against Dr. Loiterman through an arbitration proceeding.⁴³⁵

Dr. Loiterman, on appeal, sought to vacate the award claiming that the arbitrator was impartial;⁴³⁶ the attorney that acted as arbitrator had previously represented one of the hospitals out of which VGSA worked.⁴³⁷ However, the hospital was neither a party to the action, nor did it have a financial stake in the outcome of the decision.⁴³⁸ This court found that Dr. Loiterman failed to show by clear and convincing evidence that the arbitrator was biased and denied his motion to vacate the award.⁴³⁹

C. *Exceeding the Scope of Authority*

An award may be vacated when the party seeking the vacation shows by clear and convincing evidence that the arbitrator exceeded his/her authority when making the award.⁴⁴⁰ Arbitrators receive their authority from two different

428. *Id.*

429. *Id.* at 468 (the court held that since Donegal did not learn of the arbitrator's relationship with Longo until after the conclusion of the hearings, Donegal had not waived the right to object to the composition of the arbitration panel).

430. *Id.*; see also *Woods v. State Farm Ins. Co.*, No. C3-91-1901, 1992 WL 48042, at *2 (Minn. App. Mar. 17, 1992) (the court found that "only the partiality of the neutral arbitrator constitutes grounds for vacating an award"). *Id.*

431. 599 N.E.2d 1246 (Ill. App. Ct. 1992).

432. *Id.* at 1248.

433. *Id.*

434. *Id.*

435. *Id.* at 1249.

436. *Id.* at 1252.

437. *Id.* at 1253.

438. *Id.*

439. *Id.*

440. U.A.A. § 12; see also *Einhorn v. Valley Medical Specialists, P.C.*, 838 P.2d 1332, 1334 (Ariz. Ct. App. 1992).

sources.⁴⁴¹ One source is the contractual agreement, entered into by the parties, that stipulates which disputes will be submitted to arbitration.⁴⁴² The other source is the document containing the issue(s) that an arbitrator is to decide.⁴⁴³ If an arbitrator violates the terms of the agreement or decides an issue that is not before him/her, the arbitrator is deemed to have exceeded his/her authority, and the award will be vacated.⁴⁴⁴

In *Malekzadeh v. Wyshock*,⁴⁴⁵ plaintiff and defendant formed a partnership⁴⁴⁶ in which the defendant was a general partner and the plaintiff was a limited partner.⁴⁴⁷ The plaintiff sought to have one defendant enjoined from acting on behalf of the partnership because he suspected him of mismanagement.⁴⁴⁸ Also, the plaintiff requested that he be assigned the defendant's management duties.⁴⁴⁹ This dispute was arbitrated pursuant to a provision in the partnership agreement.⁴⁵⁰ The arbitrator issued an award which maintained the defendant as a general partner, but directed that his duties be taken over by an independent property manager.⁴⁵¹ The defendant motioned to vacate the award on the ground that the arbitrators exceeded their authority.⁴⁵²

The court held that the arbitrators did not exceed the scope of their authority, and the defendant's motion to vacate was denied.⁴⁵³ The court stated that it was unnecessary for arbitrators to explain their reasoning for granting particular relief.⁴⁵⁴ It stated that the award will be deemed within the scope of the arbitrator's authority as long as the underlying basis of the award can be inferred from the facts of the case.⁴⁵⁵ In this case, hiring an outside manager was within the scope of the arbitrator's authority.⁴⁵⁶ This court determined that delegating duties to an outside agent was the only way to preserve the partnership due to the animosity between the parties.⁴⁵⁷ The court held that "the arbitrator may grant any remedy or relief which the Arbitrator deems just and equitable and within the scope of the agreement of the parties."⁴⁵⁸ In addition, the court held that an

441. *Malekzadeh v. Wyshock*, 611 A.2d 18, 21 (Del. Ch. 1992).

442. *Id.*

443. *Id.*

444. *Id.*

445. 611 A.2d 18 (Del. Ch. 1992).

446. *Id.* at 19.

447. *Id.*

448. *Id.*

449. *Id.*

450. *Id.* at 20.

451. *Id.*

452. *Id.*

453. *Id.* at 23.

454. *Id.* at 22.

455. *Id.*

456. *Id.*

457. *Id.*

458. *Id.* (quoting American Arbitration Association Rule 43).

arbitrator's award will only be outside the scope of authority when it is clear that the "essence" of the award bears no relation to the underlying agreement.⁴⁵⁹

In *Department of Transportation v. Maine State Employees Ass'n*,⁴⁶⁰ the dispute concerned an employee who was discharged by the Department of Transportation.⁴⁶¹ The first arbitrator that heard the dispute reinstated the employee, but did not make a specific finding that the Department of Transportation fired him without just cause.⁴⁶² The Superior Court reversed the decision because the first arbitrator did not make a finding of just cause, and then submitted the dispute to a second arbitrator.⁴⁶³

The trial court held that "[a]n arbitrator exceeds his authority if all fair and reasonable minds would agree that the award was not possible under the . . . agreement."⁴⁶⁴ When there is an ambiguity in an arbitrator's award, it should be remanded to the arbitrator who wrote the opinion for clarification.⁴⁶⁵ This court concluded that the first arbitrator's award should not have been vacated; the fact that the first arbitrator reinstated the employee implicitly showed that the first arbitrator found no just cause for the employee's dismissal.⁴⁶⁶ Thus, the first arbitrator was found not to have exceeded her authority.⁴⁶⁷

In *International Ass'n of Firefighters, Local 1285 v. City of Las Vegas*,⁴⁶⁸ a fire investigator was caught using his firearm while off duty.⁴⁶⁹ As a result, the city of Las Vegas demoted him.⁴⁷⁰ The investigator maintained that this action was a violation of the parties' collective bargaining agreement and subsequently sought relief through arbitration.⁴⁷¹ The first appointed arbitrator ruled in favor of Local 1285, the investigator's employer.⁴⁷² A second arbitrator appointed to hear the dispute decided in favor of the city of Las Vegas.⁴⁷³

Local 1285 asserted that the second arbitrator exceeded his authority, because under the doctrine of collateral estoppel, the first arbitration award should render

459. *Id.*; see also *Slater v. Public Housing Agency of City of Saint Paul*, No. C1-91-746, 1991 WL 198487, at *1 (Minn. Ct. App. Oct. 8, 1991) (arbitrator had power to fashion an equitable remedy by creating a new position for an employee that was wrongfully discharged. Since this was not expressly precluded by the parties' submission of issues, the scope of the arbitrator's authority was not exceeded). *Id.* at *2.

460. 610 A.2d 750 (Me. 1992).

461. *Id.* at 751.

462. *Id.*

463. *Id.*

464. *Id.* at 752.

465. *Id.* at 752 n.1.

466. *Id.* at 752.

467. *Id.* at 753.

468. 823 P.2d 877 (Nev. 1991).

469. *Id.* at 878.

470. *Id.*

471. *Id.*

472. *Id.*

473. *Id.* at 878-79.

the second invalid.⁴⁷⁴ The court held that the doctrine of collateral estoppel should apply to arbitration decisions because arbitration awards must be final in order to provide an incentive for parties to arbitrate their disputes.⁴⁷⁵ Thus, the court held that the second arbitrator was bound by the first arbitrator's decision and that he exceeded his authority when rendering contrary relief.⁴⁷⁶

There is a presumption that arbitrators do not exceed their authority.⁴⁷⁷ However, an arbitrator exceeds his/her power when an award is not contemplated in the parties' agreement. As long as arbitrators' decisions fall within the purview of the issues set before them, the courts give deference to their decisions, even if contrary to law.⁴⁷⁸

D. Postponing the Arbitration Hearing

A motion to vacate may be granted if the arbitrator refuses to postpone an arbitration hearing when sufficient cause is shown.⁴⁷⁹ Review of the arbitrator's decision is limited to the arbitrator's records.⁴⁸⁰ The motion will be granted only upon a showing that the arbitrator(s) abused their discretion in denying a motion to postpone a hearing.⁴⁸¹

In *Lee v. Dean Witter Reynolds, Inc.*,⁴⁸² the appellant and the appellee sought resolution of a dispute concerning the terms of a brokerage agreement.⁴⁸³ The matter was submitted to arbitration and a hearing was scheduled for July 9, 1990.⁴⁸⁴ The appellees requested and received a continuance until September 24, 1990.⁴⁸⁵ The appellees requested a second continuance due to the death of an expert witness; the appellants objected.⁴⁸⁶ Thereafter, the American Arbitration Association denied the continuance and rendered a decision in favor of the appellants on September 24, 1990.⁴⁸⁷

The trial court reviewed the appellee's motion to vacate and admitted into evidence testimony concerning the death of the expert and reasons why a successor

474. *Id.* at 880.

475. *Id.* at 882.

476. *Id.*

477. *See Ure v. Wangler Constr. Co., Inc.*, 597 N.E.2d 759, 762 (Ill. App. Ct. 1992).

478. *Id.*; but cf. *Firefighters Local 1285*, 823 P.2d 882 n.5 ("[a]n arbitrator exceeds his arbitral authority when he has 'manifestly disregarded the law'" (quoting *American Postal Workers v. United States Postal Serv.*, 682 F.2d 1280, 1284 (9th Cir. 1982))).

479. U.A.A. § 12(a)(4).

480. *Lee v. Dean Witter Reynolds, Inc.*, 594 So. 2d 783, 785 (Fla. Dist. Ct. App. 1992).

481. *Id.*

482. 594 So. 2d 783.

483. *Id.* at 784.

484. *Id.*

485. *Id.*

486. *Id.*

487. *Id.*

could not have been substituted before the second hearing.⁴⁸⁸ The testimony went into substantially more detail than the appellee's request for the second continuance had.⁴⁸⁹ The appellate court found that it was error for the trial court to admit testimony that had not been presented before the arbitrator.⁴⁹⁰ The court stated that an arbitrator's decision to disallow a continuance of a hearing should be confined to the record of the arbitration proceeding.⁴⁹¹ Since there was no evidence of abuse of discretion or misconduct by the arbitrator, the motion to vacate was reversed and denied.⁴⁹²

E. Procedural Disagreements

The issue of whether an agreement to arbitrate exists can be raised in a motion to vacate an award.⁴⁹³ The courts give deference to arbitrators' decisions regarding procedural disputes over the arbitration proceeding.⁴⁹⁴ In *City of Mount Dora v. Central Florida Police Benevolent Ass'n, Inc.*,⁴⁹⁵ the city of Mount Dora (City) and the Central Florida Police Benevolent Association (CFPBA) arbitrated a dispute over a collective bargaining agreement.⁴⁹⁶ The agreement stated that each party would choose an arbitrator within seven days after a notice to arbitrate.⁴⁹⁷ If the parties could not agree, a list of seven arbitrators would be obtained. Then, each party would have the opportunity to cross out three names, with the last name remaining being the arbitrator.⁴⁹⁸

City and CFPBA could not agree on an arbitrator.⁴⁹⁹ City argued that CFPBA did not comply with the agreement because it failed to adhere to the strict seven-day deadline set forth in the agreement.⁵⁰⁰ However, the arbitrator ruled that the CFPBA sufficiently followed the agreement.⁵⁰¹ Thereafter, City moved to vacate the award on this ground.⁵⁰²

488. *Id.* at 784-85.

489. *Id.*

490. *Id.*; see also *Concord Gen. Mut. Ins. Co. v. Northern Assurance Co.*, 603 A.2d 470 (Me. 1992) (a party is not entitled to a testimonial hearing on a motion to vacate or confirm an award unless relevant facts will be disclosed). *Id.* at 472.

491. *Lee*, 594 So. 2d at 785.

492. *Id.*

493. See *Patton v. Hanover Ins. Co.*, 612 A.2d 517, 519 (Pa. Super. Ct. 1992).

494. *City of Mount Dora v. Central Fla. Police Benevolent Ass'n, Inc.*, 600 So. 2d 520, 521-22 (Fla. Dist. Ct. App. 1992).

495. 600 So. 2d 520.

496. *Id.*

497. *Id.* at 521.

498. *Id.*

499. *Id.*

500. *Id.*

501. *Id.*

502. *Id.*

The court found that the arbitrator did not exceed his procedural authority by ruling on this issue.⁵⁰³ It stated that it was within the realm of the arbitrator's power to decide procedural issues and procedural arbitrability.⁵⁰⁴ The court concluded that in order to preserve the finality of arbitration decisions, arbitrators must be allowed to decide procedural questions, and therefore, it was improper to vacate the arbitrator's award.⁵⁰⁵

F. Public Policy

A motion to vacate an arbitration award will be granted when the award is found to be contrary to public policy.⁵⁰⁶ This finding is made on an individual examination of each case.⁵⁰⁷ In *Department of Central Management Services v. American Federation of State, County and Municipal Employees (AFSCME)*,⁵⁰⁸ a parole officer was discharged because he knowingly made false statements to the Department of Housing and Urban Development.⁵⁰⁹ The parole officer disputed whether there was "just cause" for his removal, and the matter was submitted to arbitration.⁵¹⁰ The arbitrator did not find just cause in the removal and reinstated the officer without back pay.⁵¹¹ The trial court vacated the award on the ground that it was against public policy.⁵¹²

The court held that an award that is against public policy is not enforceable.⁵¹³ The court found that public policy has been defined in the Constitution, statutes, and judicial decisions, but more importantly, each case must be examined according to its own set of facts and circumstances to determine if public policy has been violated.⁵¹⁴ AFSCME maintained that the reinstatement of the parole officer would violate the integrity of the correctional system.⁵¹⁵ This court relied on cases which held that the focus should be on the arbitrator's award itself, and not a general concern of public policy.⁵¹⁶ The arbitrator's

503. *Id.*

504. *Id.*

505. *Id.* at 522.

506. *Department of Cent. Management Servs. v. American Fed'n of State, County and Mun. Employees (AFSCME)*, 584 N.E.2d 317, 321 (Ill. App. Ct. 1991).

507. *Id.* at 322.

508. 584 N.E.2d 317.

509. *Id.* at 318.

510. *Id.*

511. *Id.*

512. *Id.*

513. *Id.* at 321.

514. *Id.* at 322.

515. *Id.*

516. *Id.* See also *Department of Transp. v. Maine State Employees Ass'n, Seiu Local 1989*, 606 A.2d 775 (Me. 1992) (the court noted that when an award is against public policy, the public policy violated must be affirmatively expressed or defined in a Maine statute). *Id.* at 777.

award was upheld because there was "no well-defined or dominant policy mandating the discharge of the parole officer."⁵¹⁷

G. Timing

A party has ninety days to make a motion to vacate, modify, or correct an award.⁵¹⁸ The time period starts from delivery of the award to the applicant or within ninety days after any fraud, corruption, or other undue means is discovered.⁵¹⁹ If a motion is made outside the ninety day time period, confirmation of the award is mandatory.⁵²⁰ A request made by a party for an explanation of the arbitrator's award does not qualify as a request to vacate, modify, or correct an award.⁵²¹

XV. SECTION 13: MODIFICATION OR CORRECTION OF AWARD

An arbitration award may be modified or corrected by the court on one of three grounds set forth in Section 13 of the Uniform Arbitration Act:⁵²² (1) There was a miscalculation of figures or a mistake in the description of any person or property mentioned in the award; (2) The award was granted on a matter not submitted to the arbitrators; or (3) The award is imperfect in a matter of form.⁵²³

517. *AFSCME*, 584 N.E.2d at 323.

518. U.A.A. § 12; *see supra* note 394.

519. U.A.A. § 12(b); *see supra* note 394.

520. *Hart v. Metzger*, 834 S.W.2d 236, 238 (Mo. Ct. App. 1992).

521. *Birchtree Fin. Servs., Inc. v. Thomas*, 821 S.W.2d 120, 122 (Mo. Ct. App. 1991) (arbitrators are not required to give reasons for their decisions). *Id.*

522. U.A.A. Section 13 provides:

(a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

U.A.A. § 13.

523. *Id.*

Because arbitrators are the final judges of both the law and the facts, the courts give deference to their decisions.⁵²⁴

In *Carlson v. Aetna Casualty and Surety Co.*,⁵²⁵ the arbitrators decided to reduce the amount of the plaintiff's award under an uninsured motorist policy by the amount the plaintiff received from the tortfeasor's insurance.⁵²⁶ The plaintiff argued that the arbitrators made an erroneous conclusion of law because the collateral source statute, which requires reduction of recovery, did not apply to arbitration proceedings.⁵²⁷ However, the court found that the arbitrators were not acting outside their authority in applying the collateral source statute to the plaintiff's award.⁵²⁸ The trial court stated that it did not have the authority to modify the award of the arbitrators, even if it disagreed with the outcome.⁵²⁹ The court held further that a court does not have the authority to modify an award on the basis of an arbitrator's error of law.⁵³⁰

In *Jackson v. Government Employees Insurance Co.*,⁵³¹ the court found that it was improper to obtain the arbitrators' affidavit or deposition testimony in order to impeach an award.⁵³² The court held that to modify or correct an award, it must be "evident" from the arbitrator's opinion that the award is improper.⁵³³ Further, the court held that the purpose of an arbitration proceeding is to provide an expeditious resolution of disputes,⁵³⁴ and that this purpose would be thwarted by "[a]llowing challenges to the deliberation process [of arbitrators] Arbitration would be transformed from a method of dispute resolution into another pretrial formality."⁵³⁵ As a result, the plaintiff in *Jackson* was denied a request to depose the arbitrators.⁵³⁶

Arbitrators are not required to set forth the reasons underlying their decision.⁵³⁷ "[A]rbitrators are no more obligated to give reasons for an award than is a jury expected to explain a verdict."⁵³⁸ When a party makes a request

524. *Carlson v. Aetna Casualty and Sur. Co.*, No. C4-91-2006, 1992 WL 31357, at *1 (Minn. Ct. App. Feb. 25, 1992).

525. No. C4-91-2006, 1992 WL 31357.

526. *Id.* at *1.

527. *Id.*

528. *Id.*

529. *Id.*

530. *Id.* See also *Keyes Co. v. Gomez*, 590 So. 2d 954 (Fla. Dist. Ct. App. 1992).

531. 612 A.2d 1071 (Pa. Super. Ct. 1992).

532. *Id.* at 1074; see also *Patriotic Order Sons of America Hall Ass'n v. Hartford Fire Ins. Co.*, 157 A. 259 (Pa. 1931).

533. *Jackson*, 612 A.2d at 1073 n.1. See U.A.A. § 13.

534. *Jackson*, 612 A.2d at 1074.

535. *Id.*

536. *Id.* at 1071, 1074.

537. *Birchtree Fin. Servs., Inc. v. Thomas*, 821 S.W.2d 120, 122 (Mo. Ct. App. 1991).

538. *Id.* (citing *Hamilton Metals, Inc. v. Blue Valley Metal Prod. Co.*, 763 S.W.2d 225, 227 (Mo. Ct. App. 1988)).

to obtain clarification or reasoning from the arbitrator(s), it is not treated as a motion to vacate, modify, or correct an award.⁵³⁹

In *Worldwide Insurance Group v. Klopp*,⁵⁴⁰ a provision in an insurance policy stated that if an arbitrator's award exceeded a stated minimum amount, either party was entitled to demand a trial *de novo*.⁵⁴¹ The court found this portion of the policy unconscionable and against public policy.⁵⁴² The provision allowed a *de novo* review when the award was too high, but not when the award was too low.⁵⁴³ In effect, only the insurer would be dissatisfied with a high award, thus providing an "escape hatch" for the insurer to avoid high arbitration awards.⁵⁴⁴ The insured cannot appeal a low award.⁵⁴⁵ The court in *Clinton v. John Hancock Insurance Co.*⁵⁴⁶ relied on the *Klopp* finding that such a provision is unconscionable, and found that a claim of unconscionability did not satisfy the grounds necessary to vacate, modify, or correct an award.⁵⁴⁷

A. Timing

A motion to modify or correct an award must be made within ninety days, or the time specified by the state statute, after a copy of the award has been delivered to the applicant.⁵⁴⁸

In *Richardson v. Harris*,⁵⁴⁹ Harris and Richardson entered into a contract where Richardson was to construct an office for Harris by November 22, 1986.⁵⁵⁰ Relations turned sour and a dispute between Harris and Richardson over an alleged breach of contract was submitted to arbitration.⁵⁵¹ An award was rendered in favor of Richardson.⁵⁵² On September 6, 1989, Harris wrote a letter to the arbitrators requesting a clarification of the award.⁵⁵³ Richardson filed a motion for confirmation of the arbitrator's award and conversion of the award into a judgment on December 6, 1989.⁵⁵⁴ Thereafter, on December 27, 1989, Harris filed an opposition to Richardson's motion and requested that the

539. *Id.*

540. 603 A.2d 788 (Del. 1992).

541. *Id.* at 789.

542. *Id.*

543. *Id.*

544. *Id.* at 791.

545. *Id.*

546. No. 12060, 1992 WL 29804, at *2 (Del. Ch. Feb. 13, 1992).

547. *Id.*

548. U.A.A. § 13(a).

549. 818 P.2d 1209 (Nev. 1991).

550. *Id.*

551. *Id.*

552. *Id.* at 1210.

553. *Id.*

554. *Id.*

district court correct or modify the award.⁵⁵⁵ The court found Harris' motion untimely.⁵⁵⁶

Harris asserted that his motion was timely because under Nevada law, the statute of limitations should have been tolled while he awaited the response to his letter of clarification sent to the arbitrators.⁵⁵⁷ The court found that under Nevada law, Harris had ninety days from receipt of the award notice, September 5, 1989, to file his motion to modify or correct the award.⁵⁵⁸ Harris' request for clarification from the arbitrators did not act as a motion to modify or correct the award, nor did it toll the time period of ninety days from which to file.⁵⁵⁹ Thus, since Harris' motion was not filed until December 27, 1989, it was untimely.⁵⁶⁰

DAN COUGHLIN

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555. *Id.*

556. *Id.*

557. *Id.*

558. *Id.* at 1211.

559. *Id.*

560. *Id.*